

31 JAN 2005



UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Timothy E. Newholm
Boyle Fredrickson Newholm Stein & Gratz S.C.
250 East Wisconsin Avenue
Milwaukee, WI 53202

In re Application of	:	
Kunze et al.	:	
Serial No.: 09/937,331	:	DECISION ON
PCT No.: PCT/EP00/02138	:	PETITION
Int. Filing Date: 10 March 2000	:	UNDER 37 CFR 1.137(b)
Priority Date: 23 March 1999	:	
Attorney's Docket No.: 72.053	:	
For: INTERNAL VIBRATOR WITH A	:	
MEASURING SYSTEM	:	

This decision is responsive to the "PETITION FOR REVIVAL OF AN INTERNATIONAL APPLICATION FOR PATENT DESIGNATING THE U.S. ABANDONED UNTINTENTIONALLY UNDER 37 CFR 1.137(b)" filed 04 February 2002. Applicant included the \$1280 petition fee.

BACKGROUND

On 10 March 2000 applicants filed international application PCT/EP00/02138, which claimed priority of an earlier German application filed 23 March 1999. The thirty-month period for paying the basic national fee for the national stage in the United States expired at midnight on 23 September 2002.

On 01 September 2002, applicant filed a transmittal letter for entry into the national stage into the United States. The transmittal letter was accompanied by a preliminary amendment, but did not include the basic national fee. These papers were assigned Application No. 09/937,331.

On 05 December 2001, the United States Patent and Trademark Office mailed out a "NOTIFICATION OF ABANDONMENT" indicating that the application had become abandoned for failure to pay the basic national fee by thirty months.

On 04 February 2002, applicants filed the current petition along with a transmittal letter for entry into the national stage in the United States. The transmittal letter was accompanied by, *inter alia*, a declaration, the \$1280 petition to revive fee, the \$130 surcharge for filing the declaration after 30 months, the recording of assignment fee of \$40 and the basic national fee of \$890. These papers were assigned Application No. 10/049,135.

On 05 April 2002, the United States Patent and Trademark Office mailed out a "NOTICE OF CANCELLATION OF ASSIGNED SERIAL NUMBER" (form PCT/DO/EO/908) indicating that serial number 10/049,135 had been cancelled, and that the fees associated with that application had been credited to applicant's deposit account.

On 27 May 2003, 17 September 2003 and 11 March 2004, applicant filed status requests inquiring about the status of this application.

On 03 June 2004, applicant filed a copy of the papers originally filed on 04 February 2002, including the petition to revive as well as a request for refund with respect to the fees in application 10/049,135.

On 16 September 2004, applicant's petition to revive was granted.

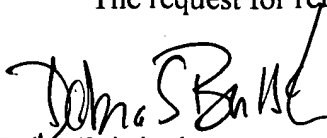
On 05 October 2004, applicant filed the current response requesting a refund of fees.

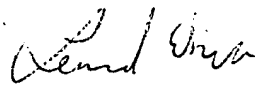
DISCUSSION

As discussed in the earlier decision, the fees in the 10/049,135 application should have been moved to the 09/937,331 application. However, with respect to application number 10/049,135, on 10 April 2002, \$1190 was credited to applicant's deposit account; on 12 July 2004, the other \$1320 was credited to applicant's deposit account. In order to pay the fees for application number 09/937,331, applicant's deposit account was charged \$2340 (\$1280 for the petition to revive, \$890 for the basic national fee, \$130 for filing the declaration after thirty months from the earliest priority date and \$40 for the recording of the assignment.) In other words, the fees in the 10/049,135 were all previously refunded. Applicant has only been charged the fees for the 09/937,331 application. Therefore, applicant is not entitled to a refund.

CONCLUSION

The request for refund is **DISMISSED**.


Debra Brittingham
Office of PCT Legal Administration
DSB/LS:dsb


Leonard Smith
PCT Legal Examiner
Office of PCT Legal Administration

Tel: (571) 272-3280

Fax: (571) 273-0459